

1 STEVEN G. KALAR
Federal Public Defender
2 DANIEL P. BLANK
Assistant Federal Public Defender
3 450 Golden Gate Avenue
San Francisco, CA 94102
4 Telephone: (415) 436-7700
5 Counsel for Defendant HARDEMAN
6

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 UNITED STATES OF AMERICA,)	No. CR 10-0859 RS
)	
11 Plaintiff,)	MOTION IN LIMINE TO EXCLUDE
)	TESTIMONY OF FEDERAL AGENTS
12 v.)	WITHOUT <i>HENTHORN</i> DISCLOSURE
)	
13 GARY HARDEMAN,)	Honorable Richard Seeborg
)	July 10, 2013
14 Defendant.)	2:00 p.m.
15 _____)	

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EXCLUDE FED. AGENT TESTIMONY

INTRODUCTION

To date, the government has not disclosed any information from the personnel files of the federal law enforcement agents it intends to call at trial, pursuant to the requirements of *Giglio* and *Henthorn*. The Court set a cut-off date for this information of June 12, 2013. Accordingly, the Court should exclude from trial the testimony of all government witnesses about whom such information exists but was not timely disclosed.

ARGUMENT

The court set a “June 12, 2013, cut-off date” for any outstanding discovery and evidentiary disclosures,” including those “required by Brady/Giglio.” Order (Docket #125) (filed Mar. 1, 2013). However, the government has yet to provide the defense with any information from the personnel files of the federal agents who worked on Mr. Hardeman’s case, as required by *Giglio v. United States*, 405 U.S. 150 (1972), and *United States v. Henthorn*, 931 F.3d 29 (9th Cir. 1990). Accordingly, the Court should exclude any testimony of all federal agents for whom the government has not timely produced material information from his or her personnel files.

The government has “a duty to examine personnel files upon a defendant’s request for production.” *Henthorn*, 931 F.2d at 31 (citing *United States v. Cadet*, 727 F.2d 1453, 1467 (9th Cir. 1984)); *see also Milke v. Ryan*, 711 F.3d 998, 1016 (9th Cir. 2013) (citing *Henthorn*). With regard to the personnel files of testifying federal agents, the government has a duty to “disclose information favorable to the defense that meets the appropriate standard of materiality.” *Cadet*, 727 F.2d at 1467. Personnel files meet this standard of materiality if they “contain information that is or may be material to the defendant’s case.” *Henthorn*, 931 F.2d at 31.

The defense has no burden to show that the requested evidence is material in order to trigger government examination of such evidence. *See id.* Rather, “[t]he obligation to examine [personnel] files arises by virtue of the making of a demand for their production.” *Id.* If the contents of the files indicate that they are or may benefit the defense – or even if they are simply relevant to the defense’s case – then the files must be furnished to the defendant. *See id.* If the government is unsure whether the files is material to the defense, then “it may submit the

